

MEMORANDUM FOR: Director of Personnel

FROM : Omega J.C. Ware, Jr.  
Director, Equal Employment Opportunity

SUBJECT : Personnel File Requests

Pursuant to the authority and responsibility vested in me under Chapter 29 of the Code of Federal regulations Section 1613 parts 204 (c) and 204 (d-4 and 5) to counsel and investigate complaints of discrimination and in compliance with Sections 213 (b) and 216 (b-2) of the same Chapter which require the cooperation of all Agency employees in the investigation of such complaints, I require the personnel file of \_\_\_\_\_.

Your immediate attention to this request is appreciated.

Omega J.C. Ware, Jr.

## Part 713

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**AUTHORITY:** The provisions of this Part 713 issued under 5 U.S.C. sections 1301, 3301, 3302, 7301; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; E.O. 11222, 3 CFR 1964-1965 Comp., p. 306; E.O. 11478, 3 CFR 1969 Comp., p. 133; 42 U.S.C. 2000e-16(b), unless otherwise noted.

**SUBPART A. [RESERVED]**

**SUBPART B. EQUAL OPPORTUNITY WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN**

*General Provisions*

**Sec. 713.201 Purpose and applicability.** (a) *Purpose.* This subpart sets forth the regulations under which an agency shall establish a continuing affirmative program for equal opportunity in employment and personnel operations without regard to race, color, religion, sex, or national origin and under which the Commission will review an agency's program and entertain an appeal from a person dissatisfied with an agency's decision or other final action on his complaint of discrimination on grounds of race, color, religion, sex, or national origin.

(b) *Applicability.* (1) This subpart applies (i) to military department as defined in section 102 of title 5, United States Code, executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, the United States Postal Service, and the Postal Rate Commission, and to the employees thereof, including employees paid from nonappropriated funds, and (ii) to those portions of the legislative and judicial branches of the Federal Government and the

government of the District of Columbia having positions in the competitive service and to the employees in those positions.

(2) This subpart does not apply to aliens employed outside the limits of the United States.

**Sec. 713.202 General policy.** It is the policy of the Government of the United States and of the government of the District of Columbia to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency.

**Sec. 713.203 Agency program.** The head of each agency shall exercise personal leadership in establishing, maintaining, and carrying out a continuing affirmative program designed to promote equal opportunity in every aspect of agency personnel policy and practice in the employment, development, advancement, and treatment of employees. Under the terms of its program, an agency shall:

(a) Provide sufficient resources to administer its equal employment opportunity program in a positive and effective manner and assure that the principal and operating officials responsible for carrying out the equal employment opportunity program meet established qualifications requirements;

(b) Conduct a continuing campaign to eradicate every form of prejudice or discrimination based upon race, color, religion, sex, or national origin, from the agency's personnel policies and practices and working conditions, including disciplinary action against employees who engage in discriminatory practices;

(c) Utilize to the fullest extent the present skills of employees by all means, including the redesigning of jobs where feasible so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements;

(d) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs, and other training measures so that they

may perform at their highest potential and advance in accordance with their abilities;

(e) Communicate the agency's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, or national origin, and solicit their recruitment assistance on a continuing basis;

(f) Participate at the community level with other employers, with schools and universities, and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability;

(g) Review, evaluate, and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policy and program;

(h) Provide recognition to employees, supervisors, managers, and units demonstrating superior accomplishment in equal employment opportunity;

(i) Inform its employees and recognized labor organizations of the affirmative equal employment opportunity policy and program and enlist their cooperation;

(j) Provide for counseling employees and applicants who believe they have been discriminated against because of race, color, religion, sex, or national origin and for resolving informally the matters raised by them;

(k) Provide for the prompt, fair, and impartial consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, or national origin; and

(l) Establish a system for periodically evaluating the effectiveness of the agency's overall equal employment opportunity effort.

Sec. 713.204 Implementation of agency program. To implement the program established under this subpart, an agency shall:

(a) Develop the plans, procedures, and regulations necessary to carry out its program established under this subpart;

(b) Appraise its personnel operations at regular intervals to assure their conformity with the policy in section 713.202 and its program established in accordance with section 713.203;

(c) Designate a Director of Equal Employment Opportunity and as many Equal Employment Opportunity Officers, Equal Employment Opportunity Counselors, Federal Women's Program Coordinators, and other persons as may be necessary, to assist the head of the agency to carry out the functions described in this subpart in all organizational units and locations of the agency. The functioning and the qualifications of the persons so designated shall be subject to review by the Commission. The Director of Equal Employment Opportunity shall be under the immediate supervision of the head of his agency, and shall be given the authority necessary to enable him to carry out his responsibilities under the regulations in this subpart;

(d) Assign to the Director of Equal Employment Opportunity the functions of:

(1) Advising the head of his agency with respect to the preparation of national and regional equal employment opportunity plans, procedures, regulations, reports, and other matters pertaining to the policy in section 713.202 and the agency program required to be established under section 713.203;

(2) Evaluating from time to time the sufficiency of the total agency program for equal employment opportunity and reporting thereon to the head of the agency with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities;

(3) When authorized by the head of the agency, making changes in programs and procedures designed to eliminate discriminatory practices and improve the agency's program for equal employment opportunity;

(4) Providing for counseling, by an Equal Employment Opportunity Counselor, of any aggrieved employee or applicant for employment who believes that he has been discriminated against because of race, color, religion,

sex, or national origin and for attempting to resolve on an informal basis the matter raised by the employee or applicant before a complaint of discrimination may be filed under section 713.214;

(5) Providing for the receipt and investigation of individual complaints of discrimination in personnel matters within the agency, subject to sections 713.211 through 713.222;

(6) Providing for the acceptance and processing and/or rejection of class complaints in accordance with Subpart F of this part;

(7) When authorized by the head of the agency, making the decision under section 713.221 for the head of the agency on complaints of discrimination and ordering such corrective measures as he may consider necessary, including the recommendation for such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice; and

(8) When not authorized to make the decision for the head of the agency on complaints of discrimination, reviewing, at his discretion, the record on any complaint before the decision is made under section 713.221 and making such recommendations to the head of the agency or his designee as he considers desirable, including the recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice;

(e) Insure that equal opportunity for women is an integral part of the agency's overall program by assigning to the Federal Women's Program Coordinators the function of advising the Director of Equal Employment Opportunity on matters affecting the employment and advancement of women;

(f) Publicize to its employees and post permanently on official bulletin boards:

(1) The names and addresses of the Director of Equal Employment Opportunity and the Federal Women's Program Coordinators;

(2) The name and address of the appropriate Equal Employment Opportunity Officer;

(3) The name and address of the Equal Employment Opportunity Counselor and the organizational units he serves; his availability

to counsel an employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin; and the requirement that an employee or applicant for employment must consult the Counselor as provided by section 713.213 about his allegation of discrimination because of race, color, religion, sex, or national origin before a complaint as provided by section 713.214 may be filed; and

(4) Time limits for contacting an Equal Employment Opportunity Counselor;

(g) Make reasonable accommodations to the religious needs of applicants and employees, including the needs of those who observe the Sabbath on other than Sunday, when those accommodations can be made (by substitution of another qualified employee, by a grant of leave, a change of a tour of duty, or other means) without undue hardship on the business of the agency. If an agency cannot accommodate an employee or applicant, it has a duty in a complaint arising under this subpart to demonstrate its inability to do so;

(h) Make readily available to its employees a copy of its regulations issued to carry out its program of equal employment opportunity; and

(i) Submit annually for the review and approval of the Commission written national and regional equal employment opportunity plans of action. Plans shall be submitted in a format prescribed by the Commission and shall include, but not be limited to—

(1) Provision for the establishment of training and education programs designed to provide maximum opportunity for employees to advance so as to perform at their highest potential;

(2) Description of the qualifications, in terms of training and experience relating to equal employment opportunity, of the principal and operating officials concerned with administration of the agency's equal employment opportunity program; and

(3) Description of the allocation of personnel and resources proposed by the agency to carry out its equal employment opportunity program.

Sec. 713.205 Commission review and evaluation of agency program operations. The

Commission shall review and evaluate agency program operations periodically, obtain such reports as it deems necessary, and report to the President as appropriate on overall progress. When it finds that an agency's program operations are not in conformity with the policy set forth in section 713.202 and the regulations in this subpart, the Commission shall require improvement or corrective action to bring the agency's program operations into conformity with this policy and the regulations in this subpart. The head of each department and agency shall comply with the rules, regulations, orders, and instructions issued by the Commission.

#### *Agency Regulations for Processing Complaints of Discrimination*

Sec. 713.211 General. An agency shall ensure that its regulations governing the processing of complaints of discrimination on grounds of race, color, religion, sex, or national origin comply with the principles and requirements in sections 713.212 through 713.222.

Sec. 713.212 Coverage. (a) The agency shall provide in its regulations for the acceptance of a complaint from any aggrieved employee or applicant for employment with that agency who believes that he has been discriminated against because of race, color, religion, sex, or national origin. A complaint may also be filed by an organization for the aggrieved person with his consent.

→(b) The agency shall provide in its regulations for the acceptance of class complaints in accordance with Subpart F. ←

Sec. 713.213 Precomplaint processing. (a) An agency shall require that an aggrieved person who believes that he has been discriminated against because of race, color, religion, sex, or national origin consult with an Equal Employment Opportunity Counselor when he wishes to resolve the matter. The agency shall require the Equal Employment Opportunity Counselor to make whatever inquiry he believes necessary into the matter; to seek a solution of the matter on an informal basis; to counsel the aggrieved person concerning the issues in the matter; to

keep a record of his counseling activities so as to brief, periodically, the Equal Employment Opportunity Officer on those activities; and, when advised that a complaint of discrimination has been accepted from an aggrieved person, to submit a written report to the Equal Employment Opportunity Officer, with a copy to the aggrieved person, summarizing his actions and advice both to the agency and the aggrieved person concerning the issues in the matter. The Equal Employment Opportunity Counselor shall, insofar as is practicable, conduct his final interview with the aggrieved person not later than 21 calendar days after the date on which the matter was called to his attention by the aggrieved person. If the final interview is not concluded within 21 days and the matter has not previously been resolved to the satisfaction of the aggrieved person, the aggrieved person shall be informed in writing at that time of his right to file a complaint of discrimination. The notice shall inform the complainant of his right to file a complaint at any time after receipt of the notice up to 15 calendar days after the final interview (which shall be so identified in writing by the Equal Employment Opportunity Counselor) and the appropriate official with whom to file a complaint. The Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The Equal Employment Opportunity Counselor shall not reveal the identity of an aggrieved person who has come to him for consultation, except when authorized to do so by the aggrieved person, until the agency has accepted a complaint of discrimination from him.

(b) The agency shall assure that full cooperation is provided by all employees to the Equal Employment Opportunity Counselor in the performance of his duties under this section.

(c) The Equal Employment Opportunity Counselor shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of his duties under this section.

Sec. 713.214 Filing and presentation of complaint. (a) *Time limits.* (1) An agency shall require that a complaint be submitted in writing by the complainant or his representative and be

signed by the complainant. The complaint may be delivered in person or submitted by mail. The agency may accept the complaint for processing in accordance with this subpart only if—

- (i) the complainant brought to the attention of the Equal Employment Opportunity Counselor the matter causing him to believe he had been discriminated against within 30 calendar days of the date of that matter, or, if a personnel action, within 30 calendar days of its effective date; and
- (ii) the complainant or his representative submitted his written complaint to an appropriate official within 15 calendar days of the date of his final interview with the Equal Employment Opportunity Counselor.

(2) The appropriate officials to receive complaints are the head of the agency, the agency's Director of Equal Employment Opportunity, the head of a field installation, an Equal Employment Opportunity Officer, a Federal Women's Program Coordinator, and such other officials as the agency may designate for that purpose. Upon receipt of the complaint, the agency official shall transmit it to the Director of Equal Employment Opportunity or appropriate Equal Employment Opportunity Officer who shall acknowledge its receipt in accordance with subparagraph (3) of this paragraph.

(3) A complaint shall be deemed filed on the date it is received, if delivered to an appropriate official, or on the date postmarked if addressed to an appropriate official designated to receive complaints. The agency shall acknowledge to the complainant or his representative in writing receipt of the complaint and advise the complainant in writing of all his administrative rights and of his right to file a civil action as set forth in section 713.281, including the time limits imposed on the exercise of these rights.

(4) The agency shall extend the time limits in this section (i) when the complainant shows that he was not notified of the time limits and was not otherwise aware of them, or that he was prevented by circumstances beyond his control from submitting the matter within the

time limits, or (ii) for other reasons considered sufficient by the agency.

(b) *Presentation of complaint.* At any stage in the presentation of a complaint, including the counseling stage under section 713.213, the complainant shall have the right to be accompanied, represented, and advised by a representative of his own choosing. If the complainant is an employee of the agency, he shall have a reasonable amount of official time to present his complaint if he is otherwise in an active duty status. If the complainant is an employee of the agency and he designates another employee of the agency as his representative, the representative shall have a reasonable amount of official time, if he is otherwise in an active duty status, to present the complaint.

Sec. 713.215 Rejection or cancellation of complaint. The head of the agency or his designee may reject a complaint which was not timely filed and shall reject those allegations in a complaint which are not within the purview of section 713.212 or which set forth identical matters as contained in a previous complaint filed by the same complainant which is pending in the agency or has been decided by the agency. He may cancel a complaint because of failure of the complainant to prosecute the complaint. He shall transmit the decision to reject or cancel by letter to the complainant and his representative. The decision letter shall inform the complainant of his right to appeal the decision of the agency to the Commission and of the time limit within which the appeal may be submitted and of his right to file a civil action as described in section 713.281.

Sec. 713.216 Investigation. (a) The Equal Employment Opportunity Officer shall advise the Director of Equal Employment Opportunity of the acceptance of a complaint. The Director of Equal Employment Opportunity shall provide for the prompt investigation of the complaint. The person assigned to investigate the complaint shall occupy a position in the agency which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The agency shall authorize the investigator to

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administer oaths and require that statements of witnesses shall be under oath or affirmation, without a pledge of confidence. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file. (As used in this subpart, the term "investigative file" shall mean the various documents and information acquired during the investigation under this section—including affidavits of the complainant, of the alleged discriminating official, and of the witnesses and copies of, or extracts from, records, policy statements, or regulations of the agency—organized to show their relevance to the complaint or the general environment out of which the complaint arose.) If necessary, the investigator may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he shall not require or coerce an employee to provide this information.

(b) The Director of Equal Employment Opportunity shall arrange to furnish to the person conducting the investigation a written authorization (1) to investigate all aspects of complaints of discrimination, (2) to require all employees of the agency to cooperate with him in the conduct of the investigation, and (3) to

require employees of the agency having any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence.

Sec. 713.217 Adjustment of complaint and offer of hearing. (a) The agency shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file. For this purpose, the agency shall furnish the complainant or his representative a copy of the investigative file promptly after receiving it from the investigator, and provide opportunity for the complainant to discuss the investigative file with appropriate officials. If an adjustment of the complaint is arrived at, the terms of the adjustment shall be reduced to writing and made part of the complaint file, with a copy of the terms of the adjustment provided the complainant. If the agency does not carry out, or rescinds, any action specified by the terms of the adjustment for any reason not attributable to acts or conduct of the complainant, the agency shall, upon the complainant's written request, reinstate the complaint for further processing from the point processing ceased under the terms of the adjustment.

(b) If an adjustment of the complaint is not arrived at, the complainant shall be notified in writing (1) of the proposed disposition of the complaint, (2) of his right to a hearing and decision by the agency head or his designee if he notifies the agency in writing within 15 calendar days of the receipt of the notice that he desires a hearing, and (3) of his right to a decision by the head of the agency or his designee without a hearing.

(c) If the complainant fails to notify the agency of his wishes within the 15-day period prescribed in paragraph (b) of this section, the appropriate Equal Employment Opportunity Officer may adopt the disposition of the complaint proposed in the notice sent to the complainant under paragraph (b) of this section as the decision of the agency on the complaint when delegated the authority to make a decision for the head of the agency under those circumstances. When this is done, the Equal Employment Opportunity Officer shall trans-



mit the decision by letter to the complainant and his representative which shall inform the complainant of his right of appeal to the Commission and the time limit applicable thereto and of his right to file a civil action as described in section 713.231. If the Equal Employment Opportunity Officer does not issue a decision under this paragraph, the complaint, together with the complaint file, shall be forwarded to the head of the agency, or his designee, for decision under section 713.221.

Sec. 713.218 Hearing. (a) *Complaints examiner.* The hearing shall be held by a complaints examiner who must be an employee of another agency except when the agency in which the complaint arose is (1) the government of the District of Columbia or (2) an agency which, by reason of law, is prevented from divulging information concerning the matter complained of to a person who has not received the security clearance required by that agency, in which event the agency shall arrange with the Commission for the selection of an impartial employee of the agency to serve as complaints examiner. (For purposes of this paragraph, the Department of Defense is considered to be a single agency.) The agency in which the complaint arose shall request the Commission to supply the name of a complaints examiner who has been certified by the Commission as qualified to conduct a hearing under this section.

(b) *Arrangements for hearing.* The agency in which the complaint arose shall transmit the complaint file containing all the documents described in section 713.222 which have been acquired up to that point in the processing of the complaint, including the original copy of the investigative file (which shall be considered by the complaints examiner in making his recommended decision on the complaint), to the complaints examiner who shall review the complaint file to determine whether further investigation is needed before scheduling the hearing. When the complaints examiner determines that further investigation is needed, he shall remand the complaint to the Director of Equal Employment Opportunity for further investigation or arrange for the appearance

of witnesses necessary to supply the needed information at the hearing. The requirements of section 713.216 apply to any further investigation by the agency on the complaint. The complaints examiner shall schedule the hearing for a convenient time and place.

(c) *Conduct of hearing.* (1) Attendance at the hearing is limited to persons determined by the complaints examiner to have a direct connection with the complaint.

(2) The complaints examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the complaints examiner shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence. The complainant, his representative, and the representatives of the agency at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(d) *Powers of complaints examiner.* In addition to the other powers vested in the complaints examiner by the agency in accordance with this subpart, the agency shall authorize the complaints examiner to:

- (1) Administer oaths or affirmations;
- (2) Regulate the course of the hearing;
- (3) Rule on offers of proof;
- (4) Limit the number of witnesses whose testimony would be unduly repetitious; and
- (5) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

(e) *Witnesses at hearing.* The complaints examiner shall request any agency subject to this subpart to make available as a witness at the hearing an employee requested by the complainant when he determines that the testimony of the employee is necessary. He may also request the appearance of an employee of any Federal agency whose testimony he determines is necessary to furnish information pertinent to the complaint under consideration. The complaints examiner shall give the complainant his reasons for the denial of a request

for the appearance of employees as witnesses and shall insert those reasons in the record of the hearing. An agency to whom a request is made shall make its employees available as witnesses at a hearing on a complaint when requested to do so by the complaints examiner and it is not administratively impracticable to comply with the request. When it is administratively impracticable to comply with the request for a witness, the agency to whom request is made shall provide an explanation to the complaints examiner. If the explanation is inadequate, the complaints examiner shall so advise the agency and request it to make the employee available as a witness at the hearing. If the explanation is adequate, the complaints examiner shall insert it in the record of the hearing, provide a copy to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. An employee of an agency shall be in a duty status during the time he is made available as a witness.

(f) *Record of hearing.* The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the complaints examiner at the hearing shall be made part of the record of the hearing. If the agency submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, he shall make the document available to the agency representative for reproduction.

(g) *Findings, analysis, and recommendations.* The complaints examiner shall transmit to the head of the agency or his designee (1) the complaint file (including the record of the hearing), (2) the findings and analysis of the complaints examiner with regard to the matter which gave rise to the complaint and the general environment out of which the complaint arose, and (3) the recommended decision of the complaints examiner on the merits of the complaint, including recommended remedial action, where appropriate, with regard to the matter which gave rise to the complaint and the general environment

out of which the complaint arose. The complaints examiner shall notify the complainant of the date on which this was done. In addition, the complaints examiner shall transmit, by separate letter to the Director of Equal Employment Opportunity, whatever findings and recommendations he considers appropriate with respect to conditions in the agency which do not bear directly on the matter which gave rise to the complaint or which bear on the general environment out of which the complaint arose.

Sec. 713.219 Relationship to other agency appellate procedures. When an employee makes a written allegation of discrimination on grounds of race, color, religion, sex, or national origin, in connection with an action that would otherwise be processed under a grievance or other system of the agency, the allegation of discrimination shall be processed under this part.

Sec. 713.220 Avoidance of delay. (a) The complaint shall be resolved promptly. To this end, both the complainant and the agency shall proceed with the complaint without undue delay so that the complaint is resolved within 180 calendar days after it was filed, including time spent in the processing of the complaint by the complaints examiner under section 713.218.

(b) The head of the agency or his designee may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. However, instead of cancelling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available.

(c) The agency shall furnish the Commission monthly reports on all complaints pending within the agency in a form specified by the Commission. If an agency has not issued a final decision, and has not requested the Commission to supply a complaints examiner, within 75 calendar days from the date a complaint was filed, the Commission may require the agency to take special measures to ensure prompt processing of the complaint or may assume responsibility for processing the complaint, including supplying an investigator to conduct any necessary investigation on be-

half of the agency. When the Commission supplies an investigator, the agency shall reimburse the Commission for all expenses incurred in connection with the investigation and shall notify the complainant in writing of the proposed disposition of the complaint no later than 15 calendar days after its receipt of the investigative report.

(d) When the complaints examiner has submitted a recommended decision finding discrimination and the agency has not issued a final decision within 180 calendar days after the date the complaint was filed, the complaints examiner's recommended decision shall become a final decision binding on the agency 30 calendar days after its submission to the agency. In such event, the agency shall so notify the complainant of the decision and furnish to him a copy of the findings, analysis, and recommended decision of the complaints examiner under section 713.218(g) and a copy of the hearing record and also shall notify him in writing of his right of appeal to the Commission and the time limits applicable thereto and of his right to file a civil action as described in section 713.2S1.

Sec. 713.221 Decision by head of agency or designee. (a) The head of the agency, or his designee, shall make the decision of the agency on a complaint based on information in the complaint file. A person designated to make the decision for the head of the agency shall be one who is fair, impartial, and objective.

(b)(1) The decision of the agency shall be in writing and shall be transmitted by letter to the complainant and his representative. When there has been no hearing, the decision shall contain the specific reasons in detail for the agency's action, including any remedial action taken.

(2) When there has been a hearing on the complaint, the decision letter shall transmit a copy of the findings, analysis, and recommended decision of the complaints examiner under section 713.218(g) and a copy of the hearing record. The decision of the agency shall adopt, reject, or modify the decision recommended by the complaints examiner. If the decision is to reject or modify the recommended decision, the de-

cision letter shall set forth the specific reasons in detail for rejection or modification.

(3) When there has been no hearing and no decision under section 713.217(c), the decision letter shall set forth the findings, analysis, and decision of the head of the agency or his designee.

(c) The decision of the agency shall require any remedial action authorized by law determined to be necessary or desirable to resolve issues of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the agency shall require remedial action to be taken in accordance with section 713.271, shall review the matter giving rise to the complaint to determine whether disciplinary action against alleged discriminatory officials is appropriate, and shall record the basis for its decision to take, or not to take, disciplinary action but this decision shall not be included in the complaint file.

(d) The decision letter shall inform the complainant of his right to appeal the decision of the agency to the Commission, of his right to file a civil action in accordance with section 713.2S1, and of the time limits applicable thereto.

Sec. 713.222 Complaint file. The agency shall establish a complaint file. Except as provided in section 713.221(c), this file shall contain all documents pertinent to the complaint. The complaint file shall include copies of (a) the notice of the Equal Employment Opportunity Counselor to the aggrieved person under section 713.213 (a), (b) the written report of the Equal Employment Opportunity Counselor under section 713.213 to the Equal Employment Opportunity Officer on whatever precomplaint counseling efforts were made with regard to the complainant's case, (c) the complaint, (d) the investigative file, (e) if the complaint is withdrawn by the complainant, a written statement of the complainant or his representative to that effect, (f) if adjustment of the complaint is arrived at under section 713.217, the written record of the terms of the adjustment, (g) if no adjustment of the complaint is arrived at under section 713.217, a copy of the letter

notifying the complainant of the proposed disposition of the complaint and of his right to a hearing, (h) if decision is made under section 713.217(c), a copy of the letter to the complainant transmitting that decision, (i) if a hearing was held, the record of the hearing, together with the complaints examiner's findings, analysis, and recommended decision on the merits of the complaint, (j) if the Director of Equal Employment Opportunity is not the designee, the recommendations, if any, made by him to the head of the agency or his designee, and (j) if decision is made under section 713.221, a copy of the letter transmitting the decision of the head of the agency or his designee. The complaint file shall not contain any document that has not been made available to the complainant or to his designated physician under section 294.401 of this chapter.

#### *Appeal to the Commission*

Sec. 713.231 Entitlement. (a) Except as provided by paragraph (b) of this section, a complainant may appeal to the Commission the decision of the head of the agency, or his designee:

(1) To reject his complaint, or a portion thereof, for reasons covered by section 713.215; or

(2) To cancel his complaint because of the complainant's failure to prosecute his complaint; or

(3) On the merits of the complaint, under section 713.217(c) or 713.221, but the decision does not resolve the complaint to the complainant's satisfaction.

(b) A complainant may not appeal to the Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the Commission.

Sec. 713.232 Where to appeal. The complainant shall file his appeal in writing, either personally or by mail, with the Appeals Review Board, U.S. Civil Service Commission, Washington, D.C. 20415.

Sec. 713.233 Time limit. (a) Except as provided in paragraph (b) of this section, a complainant may file an appeal at any time after receipt of his agency's notice of final decision on his complaint but not later than 15 calendar days after receipt of that notice.

(b) The time limit in paragraph (a) of this section may be extended in the discretion of the Appeals Review Board, upon a showing by the complainant that he was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limit.

Sec. 713.234 Appellate procedures. The Appeals Review Board shall review the complaint file and all relevant written representations made to the board. The board may remand a complaint to the agency for further investigation or a rehearing if it considers that action necessary or have additional investigation conducted by Commission personnel. This subpart applies to any further investigation or rehearing resulting from a remand from the board. There is no right to a hearing before the board. The board shall issue a written decision setting forth its reasons for the decision and shall send copies thereof to the complainant, his designated representative, and the agency. When corrective action is ordered, the agency shall report promptly to the board that the corrective action has been taken. The decision of the board is final, but shall contain a notice of the right to file a civil action in accordance with section 713.232.

Sec. 713.235 Review by the Commissioners. (a) The Commissioners may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the previous decision was issued;

(2) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy; or

(3) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

(b) When an agency gives notice of intent to request reopening within the time specified in the decision of the Appeals Review Board for the agency report of corrective action, the agency may not effect the corrective action recommended by the Board except as provided in this paragraph. When the agency gives notice of intent to request reopening, and when the appeal involves removal, separation, or suspension continuing beyond the date of the request for reopening, and when the Board decision recommends retroactive restoration, the agency shall comply with the Board decision only to the extent of the temporary or conditional restoration of the employee to duty status in the position recommended by the Board pending the outcome of the agency request for reopening. The agency shall notify the Board and the employee in writing that the corrective action it takes is temporary or conditional at the same time it gives notice of intent to request reopening. When the agency does not give notice of intent to request reopening within the time specified in the Board decision for the agency report of corrective action, or when, after giving notice of intent to request reopening, the agency does not file a request for reopening within 30 days from the date of the Board decision, or when a request to reopen is denied, the agency shall effect the corrective action recommended by the Board, and there is no further right by the agency to request reopening.

However, service under the temporary or conditional restoration provisions of this paragraph may not be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure.

Sec. 713.236 Relationship to other appeals. When the basis of the complaint of discrimination because of race, color, religion, sex, or

national origin involves an action which is otherwise appealable to the Commission and the complainant having been informed by the agency of his right to proceed under this subpart elects to proceed by appeal to the Commission, the case, including the issue of discrimination, will be processed under the regulations appropriate to that appeal when the complainant makes a timely appeal to the Commission in accordance with those regulations.

#### *Reports to the Commission*

Sec. 713.241 Reports to the Commission on complaints. Each agency shall report to the Commission information concerning precomplaint counseling and the status and disposition of complaints under this subpart at such times and in such manner as the Commission prescribes.

#### *Consolidation of Complaints*

Sec. 713.251 Joint processing and consolidation of complaints. (a) Two or more complaints of discrimination filed by employees or applicants for employment with the agency consisting of substantially similar allegations of discrimination may, with the written permission of the complainants, be consolidated by the agency or the Commission.

(b) Two or more individual complaints of discrimination from the same employee or applicant for employment may, at the discretion of the agency or the Commission, be joined for processing after notifying the individual that the complaints will be processed jointly.

#### *Freedom From Reprisal or Interferences*

Sec. 713.261. Freedom from reprisal. (a) Complainants, their representatives, and witnesses shall be free from restraint, interference, coercion, discrimination or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage under section 713, or any time thereafter.

Sec. 713.262. Review of allegations of reprisal. (a) Choice of review procedures. A complainant, his representative, or a witness who alleges restraint, interference, coercion, discrimination,

or reprisal in connection with the presentation of a complaint under this subpart, may, if an employee or applicant, have the allegation reviewed as an individual complaint of discrimination subject to sections 713.211 through 713.222 or as a charge subject to paragraph (b) of this section.

(b) *Procedure for review of charges.* (1) An employee or applicant may file a charge of restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint with an appropriate agency official as defined in section 713.214(a)(2) within 15 calendar days of the date of the alleged occurrence. The charge shall be in writing and shall contain all pertinent facts. Except as provided in subparagraph (2) of this paragraph, the agency shall undertake an appropriate inquiry into such a charge and shall forward to the Commission within 15 calendar days of the date of its receipt a copy of the charge and report of action taken. The agency shall also provide the charging party with a copy of the report of action taken. When the agency has not completed an appropriate inquiry 15 calendar days after receipt of such a charge, the charging party may submit a written statement with all pertinent facts to the Commission, and the Commission shall require the agency to take whatever action is appropriate.

(2) When a complainant, after completion of the investigation of his complaint under section 713.216, requests a hearing and in connection with that complaint alleges restraint, interference, coercion, discrimination, or reprisal, the complaints examiner assigned to hold the hearing shall consider the allegations as an issue in the complaint at hand or refer the matter to the agency for further processing under the procedure chosen by the complainant pursuant to paragraph (a) of this section.

#### *Remedial Actions*

Sec. 713.271 Remedial actions. (a) *Remedial action involving an applicant.* (1) When an agency, or the Commission, finds that an applicant for employment has been discriminated against and except for that discrimination would have been hired, the agency shall offer

the applicant employment of the type and grade denied him. The offer shall be made in writing. The individual shall have 15 calendar days from receipt of the offer within which to accept or decline the offer. Failure to notify the agency of his decision within the 15-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond his control prevented him from responding within the time limit. If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired, subject to the limitation in subparagraph (4) of this paragraph. Back pay, computed in the same manner prescribed by section 550.804 of this chapter, shall be awarded from the beginning of the retroactive period, subject to the same limitation, until the date the individual actually enters on duty. The individual shall be deemed to have performed service for the agency during this period of retroactivity for all purposes except for meeting service requirements for completion of a probationary or trial period that is required. If the offer is declined, the agency shall award the individual a sum equal to the back pay he would have received, computed in the same manner prescribed by section 550.804 of this chapter, from the date he would have been appointed until the date the offer was made, subject to the limitation of subparagraph (4) of this paragraph. The agency shall inform the applicant, in its offer, of his right to this award in the event he declines the offer.

(2) When an agency, or the Commission, finds that discrimination existed at the time the applicant was considered for employment but does not find that the individual is the one who would have been hired except for discrimination, the agency shall consider the individual for any existing vacancy of the type and grade for which he had been considered initially and for which he is qualified before consideration is given to other candidates. If the individual is not selected, the agency shall record the reasons for non-selection. If no vacancy exists, the agency shall give him this priority consideration for the next vacancy for which he is qualified. This priority

shall take precedence over priorities provided under other regulations in this chapter.

(3) This paragraph shall be cited as the authority under which the above-described appointments or awards of back pay shall be made.

(4) A period of retroactivity or a period for which back pay is awarded under this paragraph may not extend from a date earlier than two years prior to the date on which the complaint was initially filed by the applicant. If a finding of discrimination was not based on a complaint, the period of retroactivity or period for which back pay is awarded under this paragraph may not extend earlier than two years prior to the date the finding of discrimination was recorded.

(b) *Remedial action involving an employee.* When an agency, or the Commission, finds that an employee of the agency was discriminated against and as a result of that discrimination was denied an employment benefit, or an administrative decision adverse to him was made, the agency shall take remedial actions which shall include one or more of the following, but need not be limited to these actions:

(1) Retroactive promotion, with back pay computed in the same manner prescribed by section 550.804 of this chapter, when the record clearly shows that but for the discrimination the employee would have been promoted or would have been employed at a higher grade, except that the back pay liability may not accrue from a date earlier than two years prior to the date the discrimination complaint was filed, but, in any event, not to exceed the date he would have been promoted. If a finding of discrimination was not based on a complaint, the back pay liability may not accrue from a date earlier than two years prior to the date the finding of discrimination was recorded, but, in any event, not to exceed the date he would have been promoted.

(2) Consideration for promotion to a position for which he is qualified before consideration is given to other candidates when the record shows that discrimination existed at the time selection for promotion was made but it is not clear that except for the discrimination the employee would have been promoted. If the individual is

not selected, the agency shall record the reasons for nonselection. This priority consideration shall take precedence over priorities under other regulations in this chapter.

(3) Cancellation of an unwarranted personnel action and restoration of the employee.

(4) Expunction from the agency's records of any reference to or any record of an unwarranted disciplinary action that is not a personnel action.

(5) Full opportunity to participate in the employee benefit denied him (e.g., training, preferential work assignments, overtime scheduling).

### *Right To File a Civil Action*

Sec. 713.281 Statutory right. An employee or applicant is authorized by section 717(c) of the Civil Rights Act, as amended, 84 Stat. 112, to file a civil action in an appropriate U.S. district court:

(a) Within thirty (30) calendar days of his receipt of notice of final action taken by his agency on a complaint,

(b) After one hundred-eighty (180) calendar days from the date of filing a complaint with his agency if there has been no decision,

(c) Within thirty (30) calendar days of his receipt of notice of final action taken by the Commission on his complaint, or,

(d) After one hundred-eighty (180) calendar days from the date of filing an appeal with the Commission if there has been no Commission decision.

Sec. 713.282 Notice of right. An agency shall notify an employee or applicant of his right to file a civil action, and of the 30-day time limit for filing, in any final action on a complaint under sections 713.215, 713.217, 713.220, or section 713.221. The Commission shall notify an employee or applicant of his right to file a civil action, and of the 30-day time limit for filing, in any decision under section 713.234.

Sec. 713.283 Effect on administrative processing. The filing of a civil action by an employee or applicant does not terminate agency processing of a complaint or Commission processing of an appeal under this subpart.



### SUBPART C. MINORITY GROUP STATISTICS SYSTEM

Sec. 713.301 Applicability. (a) This subpart applies (1) to military departments as defined in section 102 of title 5, United States Code, executive agencies (other than the General Accounting office) as defined in section 105 of title 5, United States Code, the United States Postal Service, and the Postal Rate Commission, and to the employees thereof including employees paid from nonappropriated funds, and (2) to those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the competitive service and to the employees in those positions.

(b) This subpart does not apply to aliens employed outside the limits of the United States.

Sec. 713.302 Agency systems. (a) Each agency shall establish a system which provides statistical employment information by race or national origin.

(b) Data shall be collected only by visual identification and shall be disclosed only in the form of gross statistics. An agency shall not collect or maintain any information of the race or national origin of individual employees except when an automated data processing system is used in accordance with standards and requirements prescribed by the Commission to insure individual privacy and the separation of that information from personnel records.

(c) Each system is subject to the following controls:

(1) Only those categories of race and national origin prescribed by the Commission may be used;

(2) Only the specific procedures for the collection and maintenance of data that are prescribed or approved by the Commission may be used;

(3) The Commission shall review the operation of the agency system to insure adherence to Commission procedures and requirements.

An agency may make an exception to the prescribed procedures and requirements only with the advance written approval of the Commission.

(d) The agency may use the data only in studies and analyses which contribute affirmatively to achieving the objectives of the equal employment opportunity program. An agency shall not establish a quota for the employment of persons on the basis of race, color, religion, sex, or national origin.

(e) An agency shall report to the Commission on employment by race and national origin in the form and at such times as the Commission may require.

### SUBPART D. EQUAL OPPORTUNITY WITHOUT REGARD TO POLITICS, MARITAL STATUS, OR PHYSICAL HANDICAP

Sec. 713.401 Equal opportunity without regard to politics, marital status, or physical handicap. (a) *In appointments and position changes.* In determining the merit and fitness of a person for competitive appointment or appointment by noncompetitive action to a position in the competitive service, an appointing officer shall not discriminate on the basis of the person's political affiliations, except when required by statute, or marital status, nor shall he discriminate on the basis of a physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

(b) *In adverse actions and terminations of probationers.* An agency may not take an adverse action against an employee covered by part 752 of this chapter, nor effect the termination of a probationer under part 315 of this chapter, (1) for political reasons, except when required by statute, (2) that is based on discrimination because of marital status, or (3) for physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.



## SUBPART E. NONDISCRIMINATION ON ACCOUNT OF AGE

### General Provisions

Sec. 713.501 Purpose and applicability. (a) *Purpose.* This subpart sets forth the policy under which an agency shall establish a continuing program to assure nondiscrimination on account of age and the regulations under which an agency will process complaints of discrimination on account of age.

(b) *Applicability.* (1) This subpart applies (i) to military departments as defined in section 102 of title 5, United States Code, and Executive agencies as defined in section 105 of title 5, United States Code, the United States Postal Service and the Postal Rate Commission, and to the employees thereof, including employees paid from nonappropriated funds, and (ii) to those units of the legislative and judicial branches of the Federal Government and the Government of the District of Columbia having positions in the competitive service and to the employees of those positions.

(2) This subpart does not apply to aliens employed outside the limits of the United States.

(3) Except as provided by paragraph (b)(2) of this section, this subpart applies to applicants for positions to which paragraph (b)(1) of this section applies.

(4) This subpart applies only to employees or applicants who are at least 40 years of age and less than 65 years of age.

(c) *Exceptions.* Reasonable exemptions to the provisions of this subpart may be established by the Commission for each position for which the Commission establishes a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position.

Sec. 713.502 General policy. It is policy of the Government of the United States (and of the government of the District of Columbia) to prohibit discrimination in employment on account of age to assure that all personnel actions affecting employees or applicants for

employment are free from discrimination on account of age.

### Agency Regulations for Processing Complaints of Discrimination

Sec. 713.511 General. An agency shall provide regulations governing the acceptance and processing of complaints of discrimination on account of age which, subject to section 713.514, comply with the principles and requirements in sections 713.213 through 713.222, 713.241 and 713.261 through 713.271 of this part.

Sec. 713.512 Coverage. The agency shall provide in its regulations for the acceptance of a complaint from any aggrieved employee or applicant for employment with the agency who believes that he or she has been discriminated against on account of age and who was at least 40 years of age but less than 65 years of age at the time of the action complained of. A complaint may also be filed by an organization for the person with his or her consent.

Sec. 713.513 Effect on administrative processing. The filing of a civil action by an employee or applicant does not terminate agency processing of a complaint or Commission processing of an appeal under this subpart.

Sec. 713.514 Exclusions. Sections 713.281, and 713.282 shall not apply to the processing of discrimination complaints on account of age. The reference to section 713.281 in sections 713.215, 713.217, 713.220, and 713.221 may not be included in agency regulations required by this subpart.

Sec. 713.521 Appeal to the Commission. Except for the requirements in section 713.234 that the decision of the Board of Appeals and Review contain a notice of the right to file a civil action in accordance with section 713.282, sections 713.231 through 713.236 of this part shall apply to this subpart.

## SUBPART F—CLASS COMPLAINTS OF DISCRIMINATION

### Agency Regulations for Processing Class Complaints of Discrimination

Sec. 713.601 Definitions. (a) A "class" is a group of agency employees, former agency

employees, and/or applicants for employment with the agency, on whose behalf it is alleged that they have been, are being, or may be adversely affected, by an agency personnel management policy or practice which the agency has authority to rescind or modify, and which discriminates against the group on the basis of their common race, color, religion, sex, national origin, and/or age.

(b) A "class complaint" is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

(1) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(2) There are questions of fact common to the class;

(3) The claims of the agent of the class are typical of the claims of the class;

(4) The agent of the class, or his/her representative, if any, will fairly and adequately protect the interests of the class.

(c) An "agent of the class" is a class member who acts for the class during the processing of the class complaint.

(d) "Age" is an inclusive term which means the ages of 40 through 64 years.

Sec. 713.602 Precomplaint processing. (a) An employee or applicant who wishes to be an agent and who believes he/she has been discriminated against shall consult with an Equal Employment Opportunity Counselor within 90 calendar days of the matter giving rise to the allegation of individual discrimination or 90 calendar days of its effective date if a personnel action.

(b) The Counselor shall (1) advise the aggrieved person of the discrimination complaint procedures, of his/her right to representation throughout the precomplaint and complaint processes, and of the right to anonymity only during the precomplaint process; (2) make whatever inquiry is believed necessary; (3) make an attempt at informal resolution through discussion with appropriate officials; (4) counsel the aggrieved person concerning the issues involved; (5) inform the Equal Employment Opportunity Officer and other

appropriate officials when corrective action is believed necessary; (6) keep a record of all counseling activities; and (7) summarize actions and advice in writing both to the Equal Employment Opportunity Officer and the aggrieved person concerning the issues in the personnel management policy or practice.

(c) The Counselor shall conduct a final interview and terminate counseling with the aggrieved person not later than 30 calendar days after the date on which the allegation of discrimination was called to the attention of the Counselor. During the final interview, the Counselor shall inform the aggrieved person in writing that counseling is terminated and that he/she has the right to file a class complaint of discrimination with appropriate officials of the agency.

(d) The Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint nor to encourage the person to file a complaint.

(e) The Counselor shall not reveal the identity of an aggrieved person during the period of consultation, except, when authorized to do so by the aggrieved person.

(f) The agency shall ensure that full cooperation is provided by all employees to Counselors in the performance of their duties under this section. Counselors shall have routine access to personnel records of the agency without unwarranted invasion of privacy.

(g) Corrective action taken as a result of counseling shall be consistent with law, Executive order, and Civil Service regulations, rules, and instructions.

Sec. 713.603 Filing and presentation of a class complaint. (a) The complaint must be submitted in writing by the agent or his/her representative and be signed by the agent.

(b) The complaint shall set forth specifically and in detail: (1) A description of the agency personnel management policy or practice giving rise to the complaint; and (2) A description of the resultant personnel action or matter adversely affecting the agent.

(c) The complaint must be filed not later than 15 calendar days after the agent's receipt

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of the notice of final interview with the Counselor.

(d) The officials with whom complaints may be filed are the head of the agency, a designee of the head of the agency, and the Director of Equal Employment Opportunity.

(e) A complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by an official with whom complaints may be filed.

(f) At all stages, including counseling, in the preparation and presentation of a complaint, or claim, and appeal from a decision on a complaint, or claim, the agent or claimant shall have the right to be accompanied, represented, and advised by a representative of his/her own choosing, provided the choice of a representative does not involve a conflict of interest or conflict of position. The representative shall be designated in writing and the designation made a part of the class complaint file.

(g) If the agent is an employee in an active duty status, he/she shall have a reasonable amount of official time to prepare and present his/her complaint. Employees, including attorneys, who are representing employees of the same agency in discrimination complaint cases must be permitted to use a reasonable amount of official time to carry out that responsibility whenever it is not inconsistent with the faithful performance of their duties. Although there is no requirement that an agency permit its own employees to use official time for the purpose of representing employees of other agencies, an agency may do so at its discretion. If the use of official time is not granted in such cases, employees may be granted, at their request, annual leave, or leave without pay.

Sec. 713.604 Acceptance, Rejection or Cancellation. (a) Within 10 calendar days of an agency's receipt of a complaint, the agency shall forward the complaint, along with a copy of the Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the Commission. The Commission shall assign the complaint to a Complaints Examiner who may be an employee of the Federal Employee

Appeals Authority and who is not an employee of the agency in which the complaint arose.

(b) The Complaints Examiner may recommend that the agency reject the complaint, or a portion thereof, for any of the following reasons:

(1) It was not timely filed;

(2) It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency;

(3) It is not within the purview of this sub-part;

(4) The agent failed to consult a Counselor in a timely manner;

(5) It lacks specificity and detail;

(6) It was not submitted in writing or was not signed by the agent;

(7) It does not meet the following prerequisites;

(i) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(ii) There are questions of fact common to the class;

(iii) The claims of the agent of the class are typical of the claims of the class;

(iv) The agent of the class, or his/her representative will fairly and adequately protect the interests of the class;

(c) If an allegation is not included in the Counselor's report, the Complaints Examiner shall afford the agency 15 calendar days to explain whether the matter was discussed and if not, why he/she did not discuss the allegation with the Counselor. If the explanation is not satisfactory, the Complaints Examiner may recommend that the agency reject the allegation. If the explanation is satisfactory, the Complaints Examiner may refer the allegation to the agency for further counseling of the agent.

(d) If an allegation lacks specificity and detail, the Complaints Examiner shall afford the agent 15 calendars days to provide specific and detailed information. The Complaints Examiner may recommend that the agency reject the complaint if the agent fails to provide such

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information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the Complaints Examiner must advise the agent how to proceed on an individual or class basis concerning these allegations.

(e) The Complaints Examiner may recommend that the agency extend the time limits for filing a complaint and for consulting with a Counselor when the agent, or his/her representative, shows that he/she was not notified of the prescribed time limits and was not otherwise aware of them or that he/she was prevented by circumstances beyond his/her control from acting within the time limit.

(f) When appropriate the Complaints Examiner may recommend that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(g) The Complaints Examiner may recommend that the agency cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after the Complaints Examiner has provided the agent a written request, including notice of proposed cancellation, that he/she provide certain information or otherwise proceed with the complaint, and the agent has failed to satisfy this request within 15 calendar days of his/her receipt of the request.

(h) An agent must be informed by the Complaints Examiner in a request under paragraphs (c) or (d) of this section that his/her complaint may be rejected if the information is not provided.

(i) The Complaints Examiner's recommendation to the agency on whether to accept, reject, or cancel a complaint shall be transmitted in writing to the agency, the agent, and the agent's representative. The Complaints Examiner's recommendation to accept, reject, or cancel shall become the agency decision unless the agency rejects or modifies the decision within 10 calendar days of its receipt. The agency shall notify the agent, the agent's representative, and the Complaints Examiner of

its decision to accept, reject, or cancel a complaint. Notice of a decision to reject or cancel shall inform the agent of his/her right to proceed with his/her individual complaint of discrimination, and to appeal the final agency decision on the matter to the Appeals Review Board (ARB) and of his/her right to file a civil action.

Sec. 713.605 Notification and opting out. (a) After acceptance of a class complaint, the agency, within 15 calendar days, shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain: (1) the name of the agency or organizational segment thereof, its location, and the date of acceptance of the complaint; (2) a description of the issues accepted as part of the class complaint; (3) an explanation that class members may remove themselves from the class by notifying the agency within 30 calendar days after issuance of the notice; and (4) an explanation of the binding nature of the final decision on or resolution of the complaint.

Sec. 713.606 Avoidance of delay. The complaint shall be processed promptly after it has been accepted. To this end, the parties shall proceed with the complaint without undue delay so that the complaint is processed within 180 calendar days after it was filed.

Sec. 713.607 Freedom from restraint, interference, coercion, and reprisal. (a) Agents, claimants, their representatives, witnesses, Directors of Equal Employment Opportunity, Equal Employment Opportunity Officers, Equal Employment Opportunity Investigators, Equal Employment Opportunity Counselors, and other agency officials having responsibility for the processing of discrimination complaints shall be free from restraint, interference, coercion, and reprisal at all stages in the presentation and processing of a complaint, including the counseling stage under § 713.602, or any time thereafter.

(b) A person identified in paragraph (a) of this section, if a Federal employee or applicant, may file a complaint of restraint, interference, coercion, or reprisal in connection with the

presentation and processing of a complaint of discrimination. The complaint shall be filed and processed in accordance with provisions of Subpart B.

Sec. 713.608 Obtaining evidence concerning the complaint. (a) *General.* (1) Upon the acceptance of a complaint, the agency head or his/her designee shall designate an agency representative. The agency representative shall not be an alleged discriminating official or any individual designated under § 713.204(c) of this part.

(2) In representing the agency, the agency representative shall consult with officials, if any, named or identified as responsible for the alleged discrimination, and other officials of the agency as necessary. In such consultation, the agency representative will be subject to the provisions of Civil Service regulations, rules, and instructions concerning privacy and access to individual personnel records and reports.

(b) *Development of evidence.* (1) The Complaints Examiner shall notify the agent, or his/her representative and the agency representative that a period of not more than 60 calendar days will be allowed both parties to prepare their cases. This time period may be extended by the Complaints Examiner upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint. Evidence may be developed through interrogatories, depositions, and requests for production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(2) In the event that mutual cooperation fails, either party may request the Complaints Examiner to rule on a request to develop evidence. When the Complaints Examiner renders his/her report of findings and recommendations on the merits of the complaint, a party's failure to comply with the Complaints Examiner's ruling on an evidentiary request may be taken into account.

(3) During the time period for development of evidence, the Complaints Examiner may, in

his/her discretion, direct that an investigation of facts relevant to the complaint, or any portion thereof, be conducted by an Investigator trained and/or certified by the Commission.

(4) Both parties shall furnish the Complaints Examiner all materials which they wish him/her to examine and such other material as he/she may request.

Sec. 713.609 Opportunities for resolution of the complaint. (a) The Complaints Examiner shall furnish the agent or his/her representative and the representative of the agency a copy of all materials obtained concerning the complaint and provide opportunity for the agent to discuss materials with the agency representative and attempt resolution of the complaint.

(b) At any time after acceptance of a complaint, the complaint may be resolved by agreement of the agency and the agent to terms offered by either party.

(c) If resolution of the complaint is arrived at, the terms of the resolution shall be reduced to writing, and signed by the agent and the agency head or his/her designee. A resolution may include a finding on the issue of discrimination, and must include any corrective action agreed upon. Corrective action in the resolution must be consistent with law, Executive order, and Civil Service regulations, rules, and instructions. A copy of the resolution shall be provided the agent.

(d) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and shall state the terms of corrective action, if any, to be granted by the agency. A resolution shall bind all members of the class.

(e) If the agency does not carry out, or rescinds, any action specified by the terms of the resolution for any reason not attributable to acts or conduct of the agent, his/her representative, or class members, the agency upon the agent's written request shall reinstate the complaint for further processing from the point processing ceased under the terms of the resolution. Failure of the agency to re-

instate the complaint is grounds for appeal by the agent to the Appeals Review Board.

Sec. 713.610 Hearing. On the expiration of the period allowed for preparation of the case, the Complaints Examiner shall set a date for a hearing. The hearing shall be conducted in accordance with § 772.307(c).

Sec. 713.611 Report of findings and recommendations. (a) The Complaints Examiner shall transmit to the agency head or his/her designee: (1) The record of the hearing; (2) His/her findings and analysis with regard to the complaint; and (3) His/her report of findings and recommended decision on the complaint, including corrective action pertaining to systemic relief for the class and any individual corrective action, where appropriate, with regard to the personnel action or matter which gave rise to the complaint.

(b) The Complaints Examiner shall notify the agent of the date on which the report of findings and recommendations was forwarded to the agency head or his/her designee.

Sec. 713.612 Agency decision. (a) Within 30 calendar days of receipt of the report of findings and recommendations issued under § 713.611, the agency head or his/her designee shall issue a decision to accept, reject, or modify the findings and recommendations of the Complaints Examiner.

(b) The decision of the agency shall be in writing and shall be transmitted to the agent or his/her representative, along with a copy of the record of the hearing and a copy of the findings and recommendations of the Complaints Examiner.

(c) When the agency's decision is to reject or modify the findings and recommendations of the Complaints Examiner the decision shall contain the specific reasons in detail for the agency's action.

(d) If the agency has not issued a decision within 30 calendar days of its receipt of the Complaints Examiner's report of findings and recommendations, the findings and recommendations shall become the final agency decision. The agency shall transmit the final agency decision and the record of the hearing to the

agent or his/her representative within 5 calendar days of the expiration of the 30-day period.

(e) The agency shall inform the agent or his/her representative of the right to appeal the final agency decision to the Commission's Appeals Review Board and of his/her right to file a civil action in accordance with § 713.641 of the regulations, and of the time limits applicable thereto.

(f) A final agency decision on a class complaint shall be binding on all members of the class and the agency.

Sec. 713.613 Notification of class members of decision. Class members shall be notified by the agency, through the same media employed to give notice of the existence of the class complaint, of the agency decision and corrective action, if any. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the agency within 10 calendar days of the transmittal of its decision to the agent.

Sec. 713.614 Corrective action. (a) When discrimination is found, an agency must eliminate or modify the personnel policy or practice out of which the complaint arose, and provide individual corrective action to the agent in accordance with § 713.271 of this part. Corrective action in all cases must be consistent with law, Executive order, and Civil Service regulations, rules and instructions.

(b) When discrimination is found and a class member believes that but for that discrimination he/she would have received employment or an employment benefit, the class member may file a written claim with the head of the agency or the Director of Equal Employment Opportunity of the agency within 30 calendar days of notification by the agency of the decision of the agency.

(c) The claim must include a specific, detailed showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice within not more than 135 calendar days preceding the filing of the class complaint.

(d) The agency shall attempt to resolve the claim for relief within 60 calendar days after the date the claim was postmarked, or, in the absence of a postmark, within 60 calendar days after the date it was received by an official with whom claims may be filed. If the agency and claimant do not agree that the claimant is a member of the class or upon the relief to which the claimant is entitled, the agency shall refer the claim, with recommendations concerning it, to the Complaints Examiner.

(e) The Complaints Examiner shall notify the claimant of the right to a hearing on the claim and shall allow the parties to the claim an opportunity to submit evidence and representations concerning the claim. If a hearing is requested, it shall be conducted in accordance with § 772.307(c) of this chapter. If no hearing is requested, the Complaints Examiner, in his/her discretion, may hold a hearing to obtain necessary evidence concerning the claim.

(f) The Complaints Examiner shall issue a report of findings and recommendations on the claim which shall be treated the same as a report of findings and recommendations under §§ 713.611 and 713.612.

(g) If the Complaints Examiner determines that the claimant is not a member of the class or that the claim was not timely filed he/she shall recommend rejection of the claim and give notice of his/her action to the agency, the claimant, and his/her representative. Such notice shall include advice as to the complainant's right to appeal to the ARB or to file a civil action in accordance with the provisions of this part.

#### *Appeal to the Commission*

Sec. 713.631 Appeal to the Appeals Review Board. (a) An agent may appeal to the ARB the decision of the head of the agency or his/her designee: (1) To reject or cancel his/her complaint, or a portion thereof; for reasons covered by § 713.604; (2) to refuse to reinstate the complaint for further processing in accordance with the provisions of § 713.609(e); and (3) on the merits of the complaint and/or corrective action.

(b) A claimant may appeal to the ARB from a decision of the head of the agency or his/her designee: (1) To cancel or reject a claim for individual relief in accordance with § 713.614 (f) and (g); and (2) on the merits of his/her claim for individual relief.

(c) An appeal may be filed at any time after receipt of the agency's final decision, but not later than 15 calendar days after receipt of that decision except when the appellant shows that he/she or his/her representative was not notified of the prescribed time limit and was not otherwise aware of it, or that he/she or his/her representative was prevented by circumstances beyond his/her control from appealing within the prescribed time limit.

(d) An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the ARB. The Board's review will be made upon the existing record to determine if the agency decision is in accord with applicable law, Executive Order, or Civil Service regulations, rules, and instructions and is supported by substantial evidence.

Sec. 713.632 Reopening and reconsideration by the Commissioners. The Commissioners may reopen and reconsider any previous decision of a Commission office on their own motion or at the request of either party in accordance with provisions of § 772.312(a)(1) of this chapter.

#### *Civil Actions*

Sec. 713.641 Statutory right. (a) An agent who has filed a complaint or a claimant who has filed a claim for relief based on race, color, religion, sex, and/or national origin discrimination is authorized to file a civil action in an appropriate U.S. district court:

(1) Within 30 calendar days of his/her receipt of notice of final action taken by his/her agency on a complaint or claim;

(2) After 180 calendar days from the date he/she filed a complaint or claim with his/her agency if there has been no decision on the complaint or claim;

(3) Within 30 calendar days of his/her receipt of the decision of the ARB on his/her appeal; or

(4) After 180 calendar days from the date he/she filed an appeal with the ARB, if there has been no ARB decision.

(b) An agent who has filed a complaint or a claimant who has filed for relief based on age discrimination, is authorized to file a civil action in an appropriate U.S. district court.

Sec. 713.642 Notice of right. When the agent alleges that the agency discriminated against a class on the basis of race, color, religion, sex, national origin, and/or age, or a claimant files

for relief, the agency or the Commission shall notify him/her of his/her right to file a civil action in any final action on a complaint, or claim, under §§ 713.604, 713.612, 713.614, or 713.631.

Sec. 713.643 Effect on administrative processing. The filing of a civil action by an agent or claimant does not terminate agency processing of a complaint or claim or ARB processing of an appeal under this subpart.

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